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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced	**2/24/06**	Bill No:	**AB 2799**
Tax:	**Property**	Author:	**Strickland**
Related Bills:	**ACA 32 (Strickland)**		

BILL SUMMARY

This bill would create a change in ownership exclusion for transfers between siblings provided the constitution is amended.

ANALYSIS

Current Law

Real property is reassessed to its current fair market value whenever there is a “change in ownership.” (*Article XIIIA, Sec. 2; Revenue and Taxation Code Sections 60 - 69.5)*

A transfer of property between siblings is generally considered a change in ownership triggering reassessment of that property to its current market value.

Proposed Law

This bill would add subdivision (q) to Section 62 to provide that a "change in ownership" does not include any transfer between siblings. The exclusion would apply to a transfer occurring on or after January 1, 2007.

This bill would become operative only if voters approve a companion constitutional amendment at the November 7, 2006 statewide election.

In General

Property Tax System. California's system of property taxation under Article XIIIA of the State Constitution (Proposition 13) values property at its 1975 fair market value, with annual increases limited to the inflation rate, as measured by the California Consumer Price Index, or 2%, whichever is less, until the property changes ownership or is newly constructed. At the time of the ownership change or new construction, the value of the property for property tax purposes is redetermined based on current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation. This value is referred to as the "factored base year value."

Change in Ownership. While Proposition 13 provided that a “change in ownership” would trigger reassessment, the phrase was not defined. The Assembly Revenue and Taxation Committee appointed a special task force to recommend the statutory implementation for Proposition 13 including its change in ownership provisions. The task force findings are published in California State Assembly Publication 723, Report of the Task Force on Property Tax Administration, January 22, 1979. A second report “Implementation of Proposition 13, Volume 1, Property Tax Assessment,” prepared by the Assembly Revenue and Taxation Committee, California State Assembly Publication 748, October 29, 1979, provides additional information on how changes in ownership would be determined under Proposition 13.

Background

Change in Ownership Exclusions. As previously stated, the phrase "change in ownership" was not defined by the original Proposition 13 amendment. Certain definitional "exclusions," including the interspousal exclusion, were embodied in the initial statutory definitions necessary to implement Proposition 13's change in ownership provisions. Thereafter, three other exclusions were statutorily provided as noted below.

Bills	Year	Change In Ownership Exclusion	R&T Code
AB 1488	1979, Ch. 242	Interspousal Transfers – including marriage dissolutions (subsequently amended into Constitution via Prop. 58)	§63
AB 2718	1982, Ch. 911	Parent to Minor Child Upon Death of Parent-Residence	§62(m)
AB 2890	1984, Ch. 1010	Parent to Disabled Child - Residence	§62(n)
AB 2240	1984, Ch. 1692	Purchases of Mobilehome Parks by Residents[1]	§62.1, §62.2

Since Proposition 13, the constitution has been amended twice, as noted below, to provide for additional change in ownership exclusions. These transfers will not trigger a reassessment of the property to current fair market value. Instead, the property will retain the prior owner's base year value.

Prop.	Election	Change In Ownership Exclusion	R&T Code
58	Nov. 6, 1986	Parent-Child Interspousal- statutorily provided since 1979	§63, §63.1
193	March 26, 1986	Grandparent–Grandchild	§63.1

Other legislation previously before the Legislature, but not enacted, to exclude certain transfers from change in ownership, either through constitutional amendment or statutory amendment, include:

Bills	Year	Change in Ownership Exclusion
AB 1419	1981	Transfers between family members – spouse, brother, sister, lineal ancestor, or lineal issue.
ACA 8	1987	Transfers of principal place of residence between siblings who live together two years prior.
ACA 55	1988	Transfers of principal place of residence between siblings who live together two years prior.
SCA 9	2002	Transfers of principal place of residence between co-owners who resided together for three years - County optional.

[1] Questions have surrounded the constitutionality of this exclusion because it was created by statute. As a result a Legislative Counsel opinion was requested. Legislative Counsel's Opinion #6691, issued May 18, 1992, opined that the exclusion from change in ownership of mobilehome parks converted to resident-ownership from change in ownership was not a valid interpretation of that term as it is used in Article XIII A of the California Constitution, and was not authorized by any constitutional provision allowing mobilehome parks preferential treatment in avoiding reappraisal. Although it has been stated that an amendment would be sought, to date, no constitutional amendment has been enacted for this exclusion.

Additionally, a "Save Proposition 13" constitutional initiative amendment sponsored by Howard Jarvis in 1984, would have, among other things, excluded certain family transfers from change in ownership. That proposition failed with voters.

Prop.	Election	Change in Ownership Exclusion
36	Nov. 6, 1984 45.2% - 54.8%	Transfers from the owner to parents, grandparents, grandchildren, stepparents, uncles, aunts, spouses, stepchildren, siblings, and lineal descendants.

COMMENTS

1. **Sponsor and Purpose.** The author is sponsoring this measure to ensure that following a transfer of property between siblings property taxes will not increase.

2. **Generally, a transfer of real property between siblings triggers a reassessment of the property to its current market value.** This bill eliminates the otherwise required reassessment of the property, provided a constitutional amendment is first approved.

3. **The most common frustration taxpayers have with existing law concerning sibling transfers is the situation where the property was previously owned by a parent.** Existing law provides a change in ownership exclusion for parent to child transfers, which commonly occurs after the death of a parent. But, if one sibling subsequently acquires or purchases their other sibling's interest in the property, that percentage interest in the property will be reassessed.

   For example, a sole surviving parent leaves her home to her four children. In this case, the parent-child exclusion is available for the transfer occurring on the date of her death. But, if one child subsequently buys out his or her other siblings' interest in the property, then typically a 75 percent reappraisal of the property will occur as of the date of the transfer between the siblings.

   This bill would apply to any transfer between siblings, not just those subsequent to a parent-child transfer. For instance, if two siblings co-own rental property or a business and one decides to buy the other out, the property would not be subject to a 50 percent reassessment.

4. **The proposed exclusion for siblings, with respect to property that is not a former principal place of residence, would be more generous than that provided for parents and children.** The parent-child exclusion is limited to the first million dollars of real property transferred with respect to real property other than a principal place of residence. The proposed exclusion has no value limitation.

5. **Implementation Issues.**

   - "Sibling" is not defined.
   - Transfers of legal entity interests, as opposed to transfers of real property, are not specifically addressed.
   - Transfers involving trusts are not specifically addressed.

6. **This exclusion is <u>prospective</u>; therefore it only applies to transfers occurring on or after January 1, 2007.** This exclusion is not retroactive or retrospective. It would therefore only apply to transfers between siblings occurring on or after January 1, 2007, if enacted by voters. Any transfers occurring prior to this date, such as contacts from constituents to the author's office inspiring this legislation due to a reassessment of property, would not be affected (i.e., the reappraisal would not be reversed, either prospectively or retroactively). If enacted, siblings who had a transfer occurring prior to January 1, 2007, may mistakenly believe that the constitutional amendment will reverse the reappraisal of their property.

COST ESTIMATE

If the voters of California adopt the constitutional amendment, the Board would incur moderate costs in addressing and responding to ongoing implementation issues, as well as responding to individual inquiries as to eligibility, etc. The existing parent-child exclusion has proven to generate a substantive number of inquiries and contact from tax practitioners, property owners, and assessors. Consequently, we would anticipate a similar experience with the proposed sibling exclusion and moderate costs would be expected (Estimate over $50,000 but less than $250,000). A detailed cost estimate is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Current property tax law excludes certain transfers of real property from classification as a "change in ownership" requiring reappraisal of the subject property for tax purposes. Under this bill, the transfer of property between siblings would be excluded from classification as a "change in ownership."

Currently, statistics on the number of real property transfers between siblings are not collected, as those transactions are treated as any other change of ownership transaction. According to the California State Board of Equalization's 2004-05 Report on Budgets, Workloads, and Assessment Activities, the number of parent-to-child and grandparent-to-grandchild transfer claims of real property was about 80,000 in the 2004-05 fiscal year.

Using the number of these claims as a guide, we estimate that annually there would be 2,500 sibling transfers affected by this bill. For purposes of the revenue estimate, we will assume that the types of property affected would consist of single family residential property. While the proposed exclusion could be applied to any type of property transferred between siblings (residential, commercial or agricultural), we will assume that this will be the most typical type of transaction. A further benefit of this assumption is that the best data we have available to compare current market values with actual assessed values is in this category.

The average assessed value of properties receiving the homeowners' exemption in 2005 was $256,000. The median home price in December 2005, according to the California Association of Realtors, was $548,430. The estimated amount of assessed value difference per home is then [$548,430 - $256,000], or $292,430. The total amount of affected value can be computed by multiplying the estimated number of sibling transfers by the assessed value difference:

2,500 x $292,430 = $731 million

The revenue impact at the basic 1 percent property tax rate can be calculated as follows:

$731 million x 1% = $7.3 million

Revenue Summary

This bill would reduce property tax revenues from the basic 1 percent property tax rate by approximately $7.3 million annually.

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